

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.2900 of 2016

ORDER :

This Civil Revision Petition is filed challenging the order dt.09.06.2016 in I.A.No.578 of 2016 in O.S.No.1 of 2016 [Old No.118 of 2004] on the file of IV Additional District Judge, Tanuku, West Godavari.

2. The 2nd petitioner in this Revision is 2nd plaintiff in the said suit.

3. The 1st petitioner died pending suit.

4. The suit was filed for declaration of title and for recovery of possession of the plaint schedule properties.

5. Written statement was filed by respondents opposing grant of relief to petitioner.

6. Trial commenced and also concluded, and the matter was posted for arguments. At that stage, the petitioner filed I.A.No.578 of 2016 contending that she came to know that certain documents have been executed by respondent nos.1 to 4 in favour of certain third parties, pending suit; and it is therefore necessary to further cross-examine the 1st respondent in relation to the execution of these documents and the recitals therein.

7. Counter-affidavit was filed by 2nd respondent to

the above application stating that D.W.1 / 1st respondent is aged more than eighty (80) years; that she had been confined to bed for the previous six months and is unable to move; that she lost her memory power for the previous three months and is not in a position to speak, and therefore she will not be in a position to attend the Court or give answers to any questions posed to her; that the transactions referred to in the I.A. took place during the pendency of the suit; and therefore, there is no need to let in any oral evidence on this aspect either by recalling DW.1 or otherwise.

8. A certificate given by Dr.V. Krishna Murthy to the effect that the 1st respondent lost her memory power, was also filed.

9. Taking into account this certificate, I.A.No.578 of 2016 was dismissed by the Court below observing that there is no need to re-call her for further cross-examination.

10. Challenging the same, the present Civil Revision Petition is filed.

11. The counsel for petitioner contended that this plea on behalf of respondents that 1st respondent has lost her memory and would not be in a position to give evidence in Court is not supported by evidence of any witness and

mere filing of medical certificate by a Doctor would not suffice; that further cross-examination of DW.1 is very crucial since she and other respondents had created several documents pending suit, and her demeanor needs to be observed; that if an Advocate-Commissioner is appointed he can report to the Court about the medical condition of DW.1; and on that basis, the Court below could have taken a decision in the matter.

12. It is not in dispute that 1st respondent was examined as DW.1, and she was also cross-examined at length by petitioner's counsel.

13. In the application filed by petitioner, she contends that certain documents were executed pending suit by respondent nos.1 to 4 in respect of which further cross-examination of DW.1 is warranted.

14. In this regard, it is necessary to note that any transactions entered into with regard to the plaint schedule properties after the suit is filed would be subject to the doctrine of *lis pendens*, and such transactions would abide by the result in the suit.

15. In this view of the matter, there is necessity to cross-examine DW.1 since respondent nos.1 to 4 have not denied that all the transactions referred to in the application filed by petitioner occurred during the pendency of the suit.

16. Since the suit is of the year 2004, and since the matter is admittedly posted for arguments, at this stage it is not proper to delay the disposal of the suit by again recalling DW.1 for further cross-examination.

17. I therefore do not find any merit in the Civil Revision Petition and it is accordingly dismissed. No order as to costs.

18. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-06-2016

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